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Comptroller General
of the United States

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Washington, D.C. 20548

Decision

Matter of: Cline Enterprises, Inc.

File: B-252407

Date: June 24, 1993

Mark P. Buyle, Esq., Polsinelli, White, Vardeman & Shalton,
for the protester.

Larry J. Olson, Esq., Defense Mapping Agency, for the
agency.

Charles W. Morrow, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Contracting agency improperly rejected bid as nonresponsive based upon a perceived ambiguity in the identity of the bidder caused by various references to an affiliated company in the bid, where the protester's bid clearly explained the affiliation, and sufficiently and unambiguously identified the protester as the actual bidder by name, address, and taxpayer identification number.

DECISION

Cline Enterprises, Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DMA700-93-B-0002, issued by the Defense Mapping Agency (DMA), St. Louis, Missouri, for restaurant services.

We sustain the protest.

The IFB was issued on behalf of the DMA Restaurant Fund, a nonappropriated fund activity, and sought bids to operate, on a concession basis, three cafeteria style restaurants in St. Louis, Missouri.¹ The contract was for a base period of 2 years with three 1-year option periods.

¹Our Office has jurisdiction to decide a protest of a procurement conducted by a federal agency on behalf of a nonappropriated fund activity. Artisan Bldrs., 65 Comp. Gen. 240 (1986), 86-1 CPD ¶ 85.

At bid opening on January 20, 1993, DMA received four bids in response to the IFB. DMA rejected two of the four bids as nonresponsive. Of the bids remaining, Cline's bid was the lowest. Based on its review, DMA found that the identity of Cline as the bidder was unclear because of numerous references in the bid relating to Myron Green Cafeterias Company. Consequently, DMA rejected Cline's low bid as nonresponsive since it found Cline's legal obligation to be bound to the terms of the IFB was not clear. On February 10, DMA made award to Service America Corporation, the remaining bidder. Cline filed this protest on February 18.²

Cline argues that, notwithstanding the references in its bid to Myron Green, the bid clearly identified Cline as the bidder based on the following information contained in the bid:

"15A. NAME AND ADDRESS OF OFFEROR: Cline Enterprises, Inc. (Affiliated with Myron Green Cafeterias Company) (See attached) 412 Miami Avenue, Kansas City, KS 66105.

"K-4(c) Taxpayer Identification Number (TIN):
48-0727295.³

"K-4(e) Offeror is not owned or controlled by a common parent.

"K-6(a) Bidder operates as a Kansas corporation."⁴

Cline also submitted as attachment No. 1 to its bid, Evidence of Agent's Authority, which was signed by Richard J. Harman, Chairman of the Board of Cline, signed by Edwin

²On March 12, 1993, DMA determined that continued performance under the contract in the face of the protest was in the best interest of the government.

³Cline advises that the TIN is a unique number which belongs exclusively to Cline.

⁴Cline asserts that Myron Green is incorporated in the State of Missouri.

J. Holland, President of Cline and which had the corporate seal of Cline affixed.

DMA argues that the identity of Cline as the bidder was unclear because Cline's bid contained correspondence with the letterhead of Myron Green and referenced Myron Green and Myron Green Cafeterias Company in response to those provisions in the IFB requesting the experience of the bidder. DMA reports that in response to a section requesting the bidder to list at least two recent government and three private sector references, Cline listed the references on Myron Green letterhead. DMA states that when contacted these references referred to their relationship with Myron Green or Myron Green Cafeterias Company. Further, DMA reports that in response to the IFB's request for the bidder to state its experience in operating similar facilities Cline replied that "Myron Green began in 1909 as the first cafeteria west of the Mississippi." DMA reports that in response to the IFB's request for an organizational chart Cline provided an organizational chart bearing the name of Myron Green, and listed individuals who attended a site visit in the name of Myron Green. Additionally, DMA reports that Cline responded exclusively in terms of the experience of Myron Green Cafeterias Company in explaining their procedures for employee training programs, and in discussing Cline's backup resources. Thus, DMA maintains that an ambiguity was created regarding the identity of the bidder, since it was unclear whether Cline bid in the name of Cline or Myron Green or Myron Green Cafeterias Company.

The test for responsiveness is whether a bid as submitted represents an unequivocal offer to provide the requested supplies or services at a firm, fixed-price. Unless something on the face of the bid either limits, reduces or modifies the obligation of the prospective contractor to perform in accordance with the terms of the invitation, the bid is responsive. Haz-Tad, Inc. et al., 68 Comp. Gen. 92 (1988), 88-2 CPD ¶ 486. Uncertainty as to the identity of the bidder is a circumstance that renders a bid nonresponsive, since the bidder potentially could avoid the obligation to perform the contract because of the ambiguity created by bidding in the name of two different entities. See Moore Serv., Inc., B-212054, Dec. 6, 1983, 83-2 CPD ¶ 648; Ebasco Interiors, B-205526, Aug. 16, 1982, 82-2 CPD ¶ 130; Syllor, Inc. and Eace Chem., B-234723; B-234724 June 6, 1989, 89-1 CPD ¶ 530. Even where separate entities may appear in the same bid, however, where it is possible to identify sufficiently the actual bidder so that it would not be able to avoid the obligation of the bid, acceptance of the bid is proper. Id.

Here, when read as a whole, the bid clearly identifies Cline as the party which submitted the bid. First, the bid identified Cline as the bidder by name and address and was signed by Edwin J. Holland as president of the company, in the appropriate spaces. Second, the bid expressly disclosed and explained Cline's affiliation with Myron Green Cafeterias Company; the bid explained that Cline and Myron Green Cafeterias Company are owned by the same person(s) and that Cline was a Kansas corporation authorized to do business in the state of Missouri. Third, consistent with the foregoing representations, Cline's bid contained its exclusive TIN, a certification that Cline operated as a corporation incorporated in Kansas,⁵ and a properly signed Evidence of Agent's Authority, acknowledging Mr. Holland to be president of Cline, affixed with the appropriate Cline corporate seal.

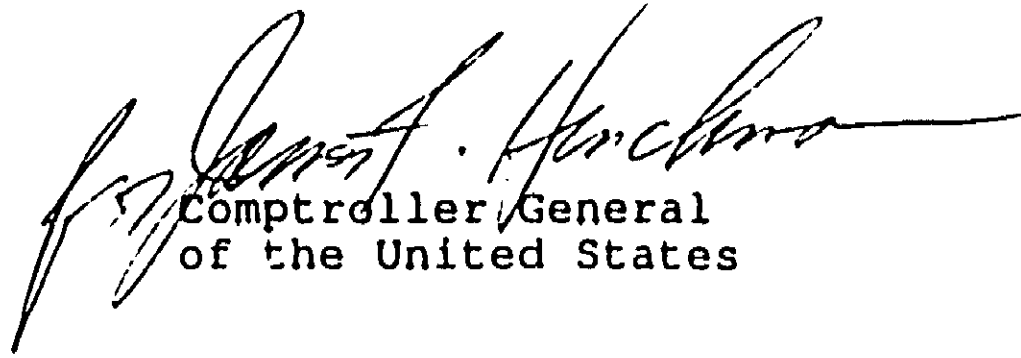
Therefore, we find that, despite the Myron Green letterhead⁶ and the references in the bid to Myron Green and Myron Green Cafeterias Company, Cline is the actual bidder and would be obligated to perform upon acceptance of the bid. See Haz-Tad, Inc. et al., supra (corporate bidder that was owned by two other corporations clearly bound itself to the bid, notwithstanding various references in the bid to a joint venture between the two corporations that owned the corporate entity submitting the bid, where the bid was submitted in the name of the corporate bidder, was signed by the bidder's president, identified the bidding entity as a corporation and explained the relationship of the bidding entity with the corporate owners); Hardie-Tynes Mfg. Co., B-237938, Apr. 2, 1990, 90-1 CPD ¶ 347 (subsidiary corporation bidder was bound to the bid, notwithstanding various references in the bid to the experience and qualifications of the subsidiary bidder's parent corporation, where the bid was clearly submitted in the name of the subsidiary corporation). In this regard, it is apparent that the detailed references to Myron Green and Myron Green Cafeterias Company, Cline's affiliates, in its bid were to demonstrate Cline's experience through its connection with Myron Green. While these references may not have satisfied DMA with regard to Cline's responsibility, there is no doubt that Cline was the bidder bound to perform the contract and that the bid was therefore responsive.

⁵In contrast, Cline asserts, and DMA has not refuted, that Myron Green Cafeterias Company is incorporated in Missouri.

⁶Cline explains that the letterhead is actually that of all of the Myron Green affiliated companies, rather than Myron Green Cafeteria Companies, as asserted by DMA, and that the companies affiliated with Myron Green such as Cline and Myron Green Cafeterias Company, use that letterhead.

We sustain the protest.

We recommend that DMA now determine Cline's responsibility and, if Cline is found to be responsible, terminate Service America's contract for the convenience of the government and award to Cline. Cline is also entitled to recover its costs of filing, and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d)(1) (1993). Cline should submit its certified claim for protest costs directly to the agency within 60 days of this decision. 4 C.F.R. § 21.6(f)(1).



Robert F. Henckens
Comptroller General
of the United States